

**Dec 12, 2017**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BRANDON OGDEN,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

No. 4:17-CV-05009-EFS

**ORDER GRANTING DEFENDANT'S  
SUMMARY JUDGMENT MOTION AND  
DENYING PLAINTIFF'S SUMMARY-  
JUDGMENT MOTION**

Before the Court, without oral argument, are cross-summary-judgment motions. ECF Nos. 12 & 13. Plaintiff Brandon Ogden appeals the Administrative Law Judge's ("ALJ") denial of benefits. See ECF No. 12. Commissioner of Social Security ("Commissioner"), as the Defendant, asks the Court to affirm the ALJ's determination that Mr. Ogden is not disabled and is capable of performing substantial gainful activity in a field for which a significant number of jobs exist in the national economy. See ECF No. 13. After reviewing the record and relevant authority, the Court is fully informed. For the reasons set forth below, the Court denies Plaintiff's Motion for Summary Judgment and grants the Commissioner's Motion for Summary Judgment.

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1 I. STANDARD OF REVIEW

2 On review, the Court must uphold the ALJ's determination that  
3 the claimant is not disabled if the ALJ applied the proper legal  
4 standards and there is substantial evidence in the record as a whole  
5 to support the decision. *Delgado v. Heckler*, 722 F.2d 570, 572 (9th  
6 Cir. 1983) (citing 42 U.S.C. § 405(g)); *Browner v. Sec'y of Health &*  
7 *Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1987). "Substantial  
8 evidence means more than a mere scintilla, but less than a  
9 preponderance. It means such relevant evidence as a reasonable mind  
10 might accept as adequate to support a conclusion." *Desrosiers v. Sec'y*  
11 *of Health & Human Servs.*, 846 F.2d 573, 576 (9th Cir. 1988) (citations  
12 and internal quotation marks omitted). The Court will also uphold  
13 "such inferences and conclusions as the [ALJ] may reasonably draw from  
14 the evidence." *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).

15 In reviewing a denial of benefits, the Court considers the  
16 record as a whole, not just the evidence supporting the ALJ's  
17 decision. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989). That  
18 said, the Court may not substitute its judgment for that of the  
19 Commissioner. If the evidence supports more than one rational  
20 interpretation, a reviewing court must uphold the ALJ's decision.  
21 *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). Further, the  
22 Court "may not reverse an ALJ's decision on account of an error that  
23 is harmless." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).  
24 An error is harmless "where it is inconsequential to the [ALJ's]  
25 ultimate nondisability determination." *Id.* at 1115 (quotation and  
26 citation omitted).

## II. DISABILITY DETERMINATION

A claimant who was eligible for supplemental security income benefits as a child during the month before he turned 18 must have his disability redetermined under the rules for disability used for adults. See 42 U.S.C. § 1382c(a)(3)(H)(iii). The decision-maker uses a five-step sequential evaluation process to determine whether an adult claimant is disabled. See 20 C.F.R. §§ 404.1520, 416.920.

Step one usually assesses whether the claimant is currently engaged in a substantial gainful activity. *Id.* § 416.920(a)(4)(i). If he is, benefits would be denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If he is not, the decision-maker would proceed to step two. When assessing a redetermination based on the claimant reaching the age 18, however, this step is skipped. See 20 CFR 416.987(b)

Step two assesses whether the claimant has a medically severe impairment, or combination of impairments, which significantly limit the claimant's physical or mental ability to do basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). If he does not, the disability claim is denied. If he does, the evaluation proceeds to step three.

Step three compares the claimant's impairment to several recognized by the Commissioner to be so severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(d), 404 Subpt. P App. 1, 416.920(d). If the impairment meets or equals one of the listed impairments, the claimant is conclusively presumed to be disabled. If the impairment does not, the evaluation proceeds to step four.

1 Step four assesses whether the impairment prevents the claimant  
2 from performing work he has performed in the past by determining the  
3 claimant's residual functional capacity ("RFC"). 20 C.F.R.  
4 §§ 404.1520(e), 416.920(e). If the claimant is able to perform his  
5 previous work, the claimant is not disabled. If the claimant cannot  
6 perform this work, the evaluation proceeds to step five.

7 Step five, the final step, assesses whether the claimant can  
8 perform other work in the national economy in view of his age,  
9 education, and work experience. 20 C.F.R. §§ 404.1520(f), 416.920(f);  
10 see *Bowen v. Yuckert*, 482 U.S. 137 (1987). If he can, the disability  
11 claim is denied. If he cannot, the claim is granted.

12 The burden of proof shifts during this analysis. The claimant  
13 has the initial burden of establishing entitlement to disability  
14 benefits under steps one through four. *Rhinehart v. Finch*, 438 F.2d  
15 920, 921 (9th Cir. 1971). At step five, the burden shifts to the  
16 Commissioner to show (1) the claimant can perform other substantial  
17 gainful activity and (2) that a "significant number of jobs exist in  
18 the national economy" which the claimant can perform. *Kail v. Heckler*,  
19 722 F.2d 1496, 1498 (9th Cir. 1984).

### 20 **III. FACTS AND PROCEDURAL HISTORY**<sup>1</sup>

21 Plaintiff Brandon James Ogden was born on December 27, 1994. See  
22 Administrative Record, ECF No. 9, ("AR") 83. As a child, he exhibited  
23 symptoms of ADHD and dysthymia (persistent depressive disorder). See  
24 AR 242. In May 1999, Mr. Ogden started receiving childhood disability

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25 <sup>1</sup> The facts are only briefly summarized. Detailed facts are contained in the  
26 administrative hearing transcript, the ALJ's decision, and the parties' briefs.

1 benefits. AR 111. Then, in May 2012, after being placed in special  
2 education classes for all subjects except physical education, Mr.  
3 Ogden graduated high school in only three years. AR 45-46, 80. He was  
4 "very active in school and after-school activities," including the  
5 basketball team. AR 80.

6 Throughout the years, Mr. Ogden has been diagnosed with  
7 pervasive developmental disorder, AR 223; dysthymia, AR 240; and a  
8 rule-out diagnosis of attention-deficit/hyperactivity disorder  
9 combined type, AR 256. Mr. Ogden has also been diagnosed with a  
10 number of physical conditions, including asthma, AR 223, and  
11 intestinal malabsorption, AR 312. Mr. Ogden further complains about  
12 migraine headaches and sleep problems. See AR 256.

13 Mr. Ogden is 5'6" tall and weighs approximately 160-190 pounds.<sup>2</sup>  
14 See AR 50, 281. Mr. Ogden lives with his girlfriend and her parents.  
15 AR 100. Mr. Ogden spends his days mostly watching television, playing  
16 video games, and caring for his son. AR 62, 100. He has no  
17 significant work history. AR 256.

18 On May 2, 2013, after he turned 18 years old, a disability  
19 examiner determined that Mr. Ogden was no longer disabled and ceased  
20 benefits effective May 1, 2013. AR 80, 111, 115. On August 7, 2013,  
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22 <sup>2</sup> The record shows that Mr. Ogden's weight was not regularly recorded and  
23 seemed to vary in recent years, possibly because of changes in medication,  
24 see AR 229 ("I just got off of it [the medication]. I couldn't eat on it.  
25 Then I lost a lot of weight. I lost like 70 lbs." (brackets in original)  
26 (internal quotation marks omitted)). For instance, according to medical  
records, Mr. Ogden weighed 161 pounds on February 22, 2012, AR 221; 171  
pounds on July 10, 2012, AR 283; 165 pounds on January 17, 2013, AR 170;  
186 pounds on March 6, 2013, AR 278; 192 pounds on April 9, 2013, AR 281;  
and 184 pounds on September 16, 2014, AR 292. Then, at the hearing on May  
15, 2015, Mr. Ogden claimed that he weighed about 160 pounds, but there was  
no updated recorded weight. AR 50.

1 Mr. Ogden requested a reconsideration hearing before an ALJ. AR 95.  
2 The hearing occurred on May 15, 2015, with ALJ Cecilia LaCara  
3 presiding in Anchorage, Alaska. AR 20. Mr. Ogden and counsel appeared  
4 via video from Kennewick Washington.<sup>3</sup> AR 38. During the hearing, Mr.  
5 Ogden gave testimony by video, and the vocational expert, Daniel A.  
6 LaBrosse, gave testimony by telephone. AR 37.

7 On June 10, 2015, the ALJ issued a decision finding Mr. Ogden  
8 not disabled. AR 31. At step one, the ALJ concluded that Mr. Ogden  
9 was eligible for supplemental security income benefits as a child for  
10 the month preceding the month in which he attained age 18. AR 22. At  
11 step two, the ALJ found that Mr. Ogden had the following severe  
12 impairments: history of pervasive development disorder and depression.  
13 AR 22-23. At step three, the ALJ determined that Mr. Ogden's  
14 limitations do not meet or medically equal the severity of any listed  
15 impairment. AR 23.

16 At step four, the ALJ found that Mr. Ogden has no past relevant  
17 work, AR 30, and that – despite his impairments – Mr. Ogden has the  
18 RFC to perform “a full range of work at all exertional levels but with  
19 the following nonexertional limitations: the claimant is limited to  
20 frequent stooping and crouching; limited to work involving one-to-two  
21 step tasks, which must be simple, routine, repetitive; and involve  
22 only superficial interaction with the general public and co-workers.”  
23 AR 25.

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25 <sup>3</sup> Mr. Ogden objected to conducting the hearing by video and asked for an in-  
26 person hearing, but the ALJ overruled his objection because it was  
submitted in excess of four months after the 30-day objection period. See  
AR 157.

1 At step five, based on testimony by the vocational expert in  
2 consideration of Mr. Ogden's age, education, work experience, and  
3 residual functional capacity, the ALJ found Mr. Ogden is capable of  
4 performing the following unskilled jobs that exist in significant  
5 numbers in the national economy: Laundry Worker I (DOT No. 361.684-  
6 014); Kitchen Helper (DOT No. 318.687-010); and Laborer, Stores (DOT  
7 299.687-058). AR 30. As a result, the ALJ concluded that Mr. Ogden's  
8 disability had ended on May 1, 2013, and that he has not become  
9 disabled again since that date. AR 20.

10 The Appeals Council denied Mr. Ogden's request for review, AR 1,  
11 making the ALJ's decision the final agency action for purposes of  
12 judicial review. See 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481,  
13 422.210. Mr. Ogden filed this lawsuit on February 10, 2017, appealing  
14 the ALJ's decision. ECF No. 1. The parties then filed the present  
15 summary-judgment motions. ECF Nos. 12 & 13.

#### 16 IV. ANALYSIS

17 In asking for the ALJ's decision to be reversed, Mr. Ogden  
18 brings three primary arguments: (A) at step two, the ALJ erred in not  
19 including all of Mr. Ogden's physical limitations; (B) the ALJ  
20 improperly rejected the opinions of some of Mr. Ogden's medical  
21 providers; and (C) at step five, she failed to identify specific jobs  
22 available in significant numbers that Mr. Ogden could perform in light  
23 of his specific functional limitations. See ECF No. 12 at 5. The  
24 Court addresses each challenge to the ALJ's decision in turn.

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1    **A.     Physical Limitations**

2           Mr. Ogden first argues that the ALJ erred at step 2 by rejecting  
3 his physical complaints about "malabsorption, migraines, and asthma  
4 despite evidence that these impairments cause significant functional  
5 limitations." ECF No. 12 at 8. The Court, however, need not decide  
6 whether these complaints amount to severe impairments. The ALJ found  
7 that Mr. Ogden has other severe impairments that impose more than a  
8 minimal limitation on his ability to perform basic work activities. AR  
9 22. Thus – even assuming that the ALJ erred in finding Mr. Ogden's  
10 malabsorption, migraines, and asthma did not constitute severe  
11 impairments – the omission of such impairments was harmless because at  
12 step 2 the ALJ nonetheless found in Mr. Ogden's favor.<sup>4</sup> See *Lewis v.*  
13 *Astrue*, 498 F.3d 909, 911 (9th Cir. 2007).

14    **B.     Medical-Provider Opinions**

15           Mr. Ogden next contends the ALJ committed reversible error by  
16 improperly weighing the medical opinions of Dr. Brad W. Leavitt, Dr.  
17 David Woolever, and a Walla Wall County Assessment. ECF No. 12 at 9.

18           "In disability benefits cases, physicians may render medical,  
19 clinical opinions, or they may render opinions on the ultimate issue  
20 of disability – the claimant's ability to perform work." *Garrison v.*  
21 *Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) (quotation omitted). There  
22 are three types of physicians: treating physicians, examining  
23 physicians, and nonexamining physicians. *Lester v. Chater*, 81 F.3d  
24 821, 830 (9th Cir. 1995). "As a general rule, more weight should be

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25    <sup>4</sup> As addressed later in this Order, even if certain limitations do not amount  
26 to a severe impairment at step 2, an ALJ is still required to consider any  
such limitations throughout the remainder of the analysis. See *Lewis v.*  
*Astrue*, 498 F.3d 909, 911 (9th Cir. 2007).



1 given to the opinion of a treating source than to the opinion of  
2 doctors who do not treat the claimant." *Lester*, 81 F.3d at 830. The  
3 ALJ must provide "clear and convincing" reasons for rejecting the  
4 uncontradicted opinion of an examining physician. *Id.*

5 If the opinion of a treating physician is contradicted by  
6 another physician, the ALJ may not reject the opinion without  
7 providing "specific and legitimate reasons" supported by "substantial  
8 evidence" in the record. *Id.* "An ALJ can satisfy the substantial  
9 evidence requirement by setting out a detailed and thorough summary of  
10 the facts and conflicting clinical evidence, stating [her]  
11 interpretation thereof, and making findings." *Garrison*, 759 F.3d at  
12 1012 (internal quotations omitted).

13 1. Dr. Levitt

14 According to Mr. Ogden, the ALJ erred by giving Dr. Levitt's  
15 opinion only partial weight without specifying what evidence  
16 contradicted that opinion. See ECF No. 12 at 10. The ALJ, however,  
17 stated as follows:

18 Dr. Levitt, the examining psychological consultant,  
19 indicated that the claimant "appears to currently be at  
20 least marginally capable of maintaining employment." Dr.  
21 Levitt further indicated that the claimant has limited  
22 ability in terms of cognitive and adaptive functioning,  
23 limited ability to sustain efforts over time, low abstract  
24 thinking abilities, fair to poor memory "(maybe  
25 selective)," limited ability to sustain attention,  
26 difficulty with social interactions, low levels of  
adaptability, and inability to make good decisions  
regarding treatment options, socialization, and jobs.  
However, Dr. Levitt assigned a GAF (global assessment of  
functioning) score of 60 – consistent with moderate  
symptoms or moderate difficulty in social, occupational, or  
school functioning.

1 I note that Dr. Levitt's opinion regarding the claimant's  
2 limitations is somewhat inconsistent with his reported  
3 examination findings, neuropsychological test results, and  
4 the GAF score. Moreover, Dr. Levitt did not give an  
5 opinion regarding the severity of the claimant's "limited"  
6 abilities. Consequently, I give Dr. Levitt's assessment  
7 partial weight only to the extent it is consistent with the  
8 residual functional capacity.  
9 AR 29 (internal record citations omitted).

10 The paragraphs quoted above demonstrate that the ALJ provided  
11 clear and convincing reasons for giving Dr. Levitt's opinion only  
12 partial weight. First, to the extent the Dr. Levitt's opinion can be  
13 read to suggest Mr. Ogden's limitations are sufficiently severe to  
14 render him unemployable, that opinion is contradicted by Dr. Levitt's  
15 own conclusion that Mr. Ogden was "at least marginally capable of  
16 maintaining employment." AR 257. Second, the ALJ noted that the tests  
17 used by Dr. Levitt, including the GAF, did not reveal more than  
18 moderate symptoms. AR 29. Third, the ALJ correctly notes that Dr.  
19 Levitt's opinion did not clearly lay out the severity of Mr. Ogden's  
20 limitations or what precise impact those limitations would have on  
21 employment.<sup>5</sup> And finally, the ALJ's RFC determination already largely  
22 reflected the broad limitations that were opined by Dr. Levitt,  
23 because it limited Mr. Ogden to work involving only superficial  
24 interaction with the general public and coworkers and one-or-two step  
25 tasks that are simple, routine, and repetitive. AR 25. The Court

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26 <sup>5</sup> For instance, Dr. Levitt's report stated:

Brandon's depressed mood and difficulties interacting socially will likely make it difficult to function adaptively on a job over time in a consistent manner. He is likely to have low levels of motivation and energy, low levels of job satisfaction, poor job performance, and high levels of absenteeism, as well as difficulty socializing in an effective manner. These effects are likely to wax and wane over time. AR 257. Such statements only convey potential difficulties in a broad manner and do not provide particularized limitations.

1 therefore holds that the ALJ did not err by assigning limited weight  
2 to Dr. Levitt's opinion.

3 2. Dr. Woolever

4 As noted by Mr. Ogden, on March 3, 2015, Dr. Woolever filled out  
5 a Social Security Disability Medical Report in which he indicated that  
6 Mr. Ogden suffers from intestinal malabsorption, causing abdominal  
7 pain, diarrhea, weight loss. AR 312. Dr. Woolever opined that because  
8 of this, Mr. Ogden is unable to work, would need to miss four days or  
9 more per month if he did work, and would need to lie down for 30-90  
10 minutes three times a day. AR 312-13. Mr. Ogden argues that the ALJ  
11 erred in rejecting Dr. Woolever's opinion regarding these limitations  
12 without giving adequate reasons for doing so. ECF No. 12 at 12.

13 Contrary to Mr. Ogden's contentions, however, the ALJ gave clear  
14 and convincing reasons for giving Dr. Woolever's opinion little  
15 weight:

16 Dr. Woolever did not include a description of what  
17 objective evidence, other than an alleged 32 pound weight  
18 loss, upon which he relied in rendering his opinion. I  
19 note that the medical evidence of record does not reveal a  
20 32 pound weight loss. Moreover, Dr. Woolever indicated  
21 that his first and last dates of treatment were in December  
22 2014. I note that the medical evidence of record reveals a  
CT scan ordered by Dr. Woolever, which incidentally  
revealed no significant findings, but no actual treatment  
by Dr. Woolever. Furthermore, the medical evidence of  
record simply does not reveal treatment for symptoms  
related to intestinal malabsorption. Therefore, I find Dr.  
Woolever's assessment unsupported and give it little  
weight.

23 AR 29.

24 Moreover, an ALJ "need not accept the opinion of a doctor if  
25 that opinion is brief, conclusory, and inadequately supported by  
26 clinical findings." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.

2005); see also 20 C.F.R. § 416.927(c)(3) (weight assigned to medical source can depend on evidentiary support and the explanation provided).

Here, Dr. Woolever's opinion was brief, conclusory, and apparently based on a one-time treatment and only limited medical evidence. For instance, as the basis for his diagnosis, Dr. Woolever stated that Mr. Ogden had lost 32 pounds in six months, AR 312, but there was no record of such a drastic weight loss. Dr. Woolever noted that Mr. Ogden was being "worked up for intestinal absorption" and stated that Mr. Ogden's prognosis was "fair[,] depending on findings of [a] small intestinal biopsy," AR 313, but there is no indication that such a biopsy was ever performed. Nor is there any evidence that Dr. Woolever ever again saw Mr. Ogden after the one visit in December 2014. The ALJ noted these shortcomings, see AR 29, and therefore did not err in rejecting Dr. Woolever's opinion, see *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007) (explaining the ALJ is entitled to weigh a treating physician's opinion by a number of factors, including the "length of the treatment relationship and the frequency of examination") (quoting 20 C.F.R. § 404.1527(c)(2)(i)).

### **C. Walla Walla County Assessment**

Mr. Ogden contends that the ALJ failed to address an intake assessment dated March 1, 2012, prepared by the Walla Walla County Department of Human Services (the "2012 Assessment"). ECF No. 12 at 13. Mr. Ogden points out that the assessment indicates Mr. Ogden's symptoms are consistent with a diagnosis of dysthymic disorder (persistent depressive disorder, DSM-5 300.4), and his symptoms are

1 sufficiently severe to cause a "marked impairment" in occupational  
2 functioning and/or during usual social activities. See ECF No. 12 at  
3 13; see also AR 238. Mr. Ogden takes issue with the fact that neither  
4 the residual functional capacity assessment nor the hypotheticals  
5 posed by the ALJ to the vocational expert incorporated such  
6 limitations. See ECF No. 12 at 13.

7 In making a determination of disability, the ALJ must  
8 develop the record and interpret the medical evidence. In  
9 doing so, the ALJ must consider the "combined effect" of  
10 all the claimant's impairments without regard to whether  
11 any such impairment, if considered separately, would be of  
12 sufficient severity. 20 C.F.R. § 416.923. However, in  
13 interpreting the evidence and developing the record, the  
14 ALJ does not need to "discuss every piece of evidence."  
15 *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003)  
16 (quoting *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998)).

17 Here, although the ALJ did not assign a specific weight to the  
18 2012 Assessment, it was not a medical opinion, and she was not  
19 required to do so. See *Howard*, 341 F.3d at 1012. Further, the ALJ  
20 clearly considered the 2012 Assessment while making her determination,  
21 as she cited to it multiple times.<sup>6</sup> See AR 23, 27-28. The 2012  
22 Assessment listed no author, it was prepared while Mr. Ogden was still  
23 a minor child enrolled in high school, and its information was not  
24 particularly probative as to Mr. Ogden's functional abilities.<sup>7</sup> See AR

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25 <sup>6</sup> On September 12, 2013, the disability examiner also considered the March 1,  
26 2012 intake assessment in reaching the decision to affirm the May 2, 2013  
cessation of benefits. See AR 80, 82.

<sup>7</sup> Notably, the evidence and analysis for determining whether an adult is  
disabled is significantly different from that for a minor. Compare, e.g.,  
42 U.S.C. § 1382c(a)(3)(B) (An adult is disabled "only if his physical or  
mental impairment or impairments are of such severity that he is not only  
unable to do his previous work but cannot, considering his age, education,  
and work experience, engage in any other kind of substantial gainful work  
which exists in the national economy . . . ."), with *id.* at (a)(3)(C)(i)  
("An individual under the age of 18 shall be considered disabled . . . if

229-39. Further, the 2012 Assessment was subsequently updated to reflect further developments, such as on June 1, 2012, when it was noted that Mr. Ogden "was doing very well in school this year and even got enough[] credits completed to be able to graduate early." AR 242. As such, the ALJ did not err by declining to provide a detailed analysis of the 2012 Assessment; nor did she err by declining to adopt all the limitations arguably suggested therein. See *Howard*, 341 F.3d at 1012 (holding that an ALJ need not discuss "every piece of evidence" in order to demonstrate that the ALJ did not "selectively analyze" the evidence). And the Court finds that substantial evidence in the record supports the ALJ's findings regarding Mr. Ogden's residual functional capacity.

Moreover, even assuming *arguendo* that the ALJ should have given greater import to the 2012 Assessment, there is no indication that doing so would have changed Mr. Ogden's residual functional capacity or what limitations should have been included in the hypotheticals posed to the vocational expert. The 2012 Assessment simply did not indicate any limitations greater than those already included in the ALJ's RFC determination, which limited his potential work to simple, routine, repetitive, one-to-two step tasks with only superficial interaction with the general public and coworkers. *Cf.* AR 25, 229-39. Thus, had the ALJ somehow erred in her consideration of the Assessment, that error would be harmless. See *Molina*, 674 F.3d at 1111.

#### **D. Available Jobs**

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that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations . . . .").

1 Finally, Mr. Ogden argues that the ALJ "failed to meet her step  
2 five burden to identify specific jobs, available in significant  
3 numbers, consistent with Mr. Ogden's specific functional limitations."  
4 ECF No. 12 at 13. Mr. Ogden asserts that the vocational testimony on  
5 which the ALJ relied "was without evidentiary value because it was  
6 provided in response to . . . incomplete hypothetical[s]." ECF No. 12  
7 at 13-14. The hypotheticals posed to the vocational expert were  
8 incomplete, according to Mr. Ogden, because they "failed to account  
9 for limitations set forth by Mr. Ogden's treating and examining  
10 providers." ECF No. 12 at 14.

11 As discussed above, the ALJ did not err in assigning the weights  
12 she did to Mr. Ogden's treating and examining providers. The ALJ was  
13 only required to include those limitations that were credible. See  
14 *Osenbrock v. Apfel*, 240 F.3d 1157, 1165 (9th Cir. 2001). And  
15 substantial evidence supported the ALJ's determinations regarding Mr.  
16 Ogden's RFC and the corresponding hypothetical questions. Thus, the  
17 Court holds that the ALJ satisfied her burden at step five by  
18 identifying specific jobs available in significant numbers that Mr.  
19 Ogden could perform given his residual functional capacity, age,  
20 education, and work experience. See *Delgado*, 722 F.2d at 572; see also  
21 42 U.S.C. § 405(g) ("The findings of the Commissioner of Social  
22 Security as to any fact, if supported by substantial evidence, shall  
23 be conclusive . . .").

#### 24 V. CONCLUSION

25 In summary, the Court holds that the ALJ committed no reversible  
26 error in her assessment of Mr. Ogden's physical limitations at step

1 two; her consideration of the opinions of Mr. Ogden's medical  
2 providers; or her identification of specific jobs available at step  
3 five. In determining that Mr. Ogden is not disabled, the ALJ applied  
4 the proper legal standards, and her decision is supported by  
5 substantial evidence in the record. See *Delgado*, 722 F.2d at 572;  
6 *Brawner*, 839 F.2d at 433.

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is  
9 **DENIED.**

10 2. Defendant's Motion for Summary Judgment, **ECF No. 13**, is  
11 **GRANTED.**

12 3. The Clerk's Office is to enter **JUDGMENT** in favor of the  
13 Commissioner.

14 4. The case shall be **CLOSED.**

15 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this  
16 Order and provide copies to all counsel.

17 **DATED** this   11<sup>th</sup>   day of December 2017.

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19                   s/Edward F. Shea                    
20 EDWARD F. SHEA  
21 Senior United States District Judge  
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